

Assembly Bill No. 1382

CHAPTER 643

An act to amend Section 120917 of the Health and Safety Code, relating to communicable diseases.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1382, Roger Hernández. HIV counselors.

Existing law establishes the Office of AIDS in the State Department of Public Health and defines human immunodeficiency virus (HIV) as the etiologic agent of acquired immunodeficiency syndrome (AIDS). Existing law authorizes HIV counselors that meet specified requirements to perform skin punctures for purposes of withdrawing blood for HIV test purposes.

This bill would authorize HIV counselors to perform hepatitis C virus (HCV) or combined HIV/HCV tests in addition to HIV tests, as specified, and would make conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 120917 of the Health and Safety Code is amended to read:

120917. (a) An HIV counselor who meets the requirements of subdivision (e) may do all of the following:

(1) Perform any HIV, hepatitis C virus (HCV), or combination HIV/HCV test that is classified as waived under the federal Clinical Laboratory Improvement Act (CLIA) (42 U.S.C. Sec. 263a and following) if all of the following conditions exist:

(A) The performance of the HIV, HCV, or combination HIV/HCV test meets the requirements of CLIA and, subject to subparagraph (B), Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(B) Notwithstanding Section 1246 of the Business and Professions Code, an HIV counselor may perform skin punctures for the purpose of withdrawing blood for HIV, HCV, or combination HIV/HCV testing, upon specific authorization from a licensed physician and surgeon, provided that the person meets both of the following requirements:

(i) He or she works under the direction of a licensed physician and surgeon.

(ii) He or she has been trained in both rapid HIV, HCV, or combination HIV/HCV test proficiency for skin puncture blood tests and oral swab tests

and in universal infection control precautions, consistent with best infection control practices established by the Division of Occupational Safety and Health in the Department of Industrial Relations and the federal Centers for Disease Control and Prevention.

(C) The person performing the HIV, HCV, or combination HIV/HCV test meets the requirements for the performance of waived laboratory testing pursuant to subdivision (a) of Section 1206.5 of the Business and Professions Code. For purposes of this subdivision and subdivision (a) of Section 1206.5 of the Business and Professions Code, an HIV counselor who meets the requirements of subdivision (e) shall be “other health care personnel providing direct patient care” as referred to in paragraph (13) of subdivision (a) of Section 1206.5 of the Business and Professions Code.

(D) The patient is informed that the preliminary result of the test is indicative of the likelihood of HIV infection or HCV exposure and that the result must be confirmed by an additional more specific test, or, if approved by the federal Centers for Disease Control and Prevention for that purpose, a second different rapid HIV, HCV, or combination HIV/HCV test. Nothing in this subdivision shall be construed to allow an HIV counselor to perform any HIV, HCV, or combination HIV/HCV test that is not classified as waived under the CLIA.

(2) Notwithstanding Section 1246.5 of the Business and Professions Code, order and report HIV, HCV, or combination HIV/HCV test results from tests performed pursuant to paragraph (1) to patients without authorization from a licensed health care professional or his or her authorized representative. Patients with indeterminate or positive test results from tests performed pursuant to paragraph (1) shall be referred to a licensed health care provider whose scope of practice includes the authority to refer patients for laboratory testing for further evaluation.

(b) An HIV counselor who has been certified pursuant to subdivision (b) of Section 120871 prior to September 1, 2009, and who will administer rapid HIV, HCV, or combination HIV/HCV skin puncture tests shall obtain training required by clause (ii) of subparagraph (B) of paragraph (1) of subdivision (a) prior to September 1, 2011. The HIV counselor shall not, unless also certified as a limited phlebotomist technician, perform a skin puncture pursuant to this section until he or she has completed the training required by that clause.

(c) An HIV counselor who meets the requirements of this section with respect to performing any HIV, HCV, or combination HIV/HCV test that is classified as waived under the CLIA may not perform any other test unless that person meets the statutory and regulatory requirements for performing that other test.

(d) This section shall not be construed to certify an HIV counselor as a phlebotomy technician or a limited phlebotomy technician, or to fulfill any requirements for certification as a phlebotomy technician or a limited phlebotomy technician, unless the HIV counselor has otherwise satisfied the certification requirements imposed pursuant to Section 1246 of the Business and Professions Code.

(e) (1) An HIV counselor shall meet one of the following criteria:

(A) Is trained by the Office of AIDS and working in an HIV counseling and testing site funded by the department through a local health jurisdiction, or its agents.

(B) Is working in an HIV counseling and testing site that meets both of the following criteria:

(i) Utilizes HIV counseling staff who are trained by the Office of AIDS or its agents.

(ii) Has a quality assurance plan approved by the local health department in the jurisdiction where the site is located and has HIV counseling and testing staff who comply with the quality assurance requirements specified in Section 1230 of Article 1 of Group 9 of Subchapter 1 of Chapter 2 of Division 1 of Title 17 of the California Code of Regulations.

(2) (A) The Office of AIDS or its agents may charge a fee for training HIV counseling staff.

(B) The local health department may charge a fee for the quality assurance plan approval.